

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

MARRIOTT HOTEL SERVICES, INC.

Employer,

and

UNITE HERE LOCAL 2,

Petitioner.

Case No. 20-RC-236046

**MARRIOTT HOTEL SERVICES, INC.'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

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I. INTRODUCTION

This case presents important issues of policy and precedent concerning the scope of appropriate bargaining units in the hotel industry. Therefore, pursuant to Section 102.67 of the National Labor Relations Board (“Board” or “NLRB”)’s Rules and Regulations, Marriott Hotel Services, Inc. (“Marriott” or the “Company”) respectfully requests review of the Decision and Direction of Election (the “Decision”) issued by the Regional Director of Region 20 of the National Labor Relations Board (the “Board”) on March 15, 2019.¹

The Regional Director found that the Union’s petitioned-for unit was inappropriate, but clearly erred in defining an appropriate alternative unit. The Regional Director included the At-Your-Service (AYS) Runner classification in the unit but excluded many other classifications of employees who are part of the same AYS function and/or are also part of the Front Office department. The excluded classifications consist of At-Your-Service Agents, Guest Service Aides, PM Front Desk Clerks/Night Auditors, Room Controllers, and Guest Service Representatives. The Regional Director also excluded a Shipping & Receiving Clerk from the unit. The excluded classifications do not have a sufficiently distinct community of interest from the AYS Runners or from the other included classifications.

In defining this alternative unit, the Regional Director departed from established precedent involving hotels with a high degree of functional integration, such as the hotel at issue in this case, where wall-to-wall units are found to be appropriate. Moreover, the Regional Director inappropriately applied a distinction between supposedly “white collar” and “blue collar” employees that often does not make sense, especially as applied in this case. The Regional Director erroneously excluded “blue collar” employees – the Guest Service Aides in

¹ A true and correct copy of the Decision is attached as Exhibit A.

particular – who share a community of interest with the other “blue collar” employees who were included in the unit.²

The Regional Director further misapplied the community-of-interest factors to wrongly conclude that the “blue collar” employees in the alternative unit share a community of interest that is sufficiently distinct from the excluded “white collar” employees.

II. BASIS FOR REVIEW

Under Section 102.67(d) of the Board’s Rules and Regulations, a Request for Review should be granted on the following three grounds, each of which is present in this case: (1) the Decision is clearly erroneous on the record in a manner that prejudicially affects the Company’s rights; (2) the Decision raises a substantial question of law or policy because of the departure from officially reported Board precedent; and (3) there are compelling reasons for reconsideration of an important Board rule or policy. 29 C.F.R. § 102.67(d). The Company’s Request for Review should be granted based on this standard.

First, the Board should grant the Company’s Request for Review because the Regional Director departed from established precedent in directing an election in an alternative unit that excluded the Front Office employees and the Shipping & Receiving Clerk. Based on relevant precedent in the hotel industry, the Regional Director should have directed an election in a wall-to-wall, or nearly wall-to-wall, unit.³

Second, in excluding the Front Office employees from the unit, the Regional Director clearly erred in applying a distinction between white collar and blue collar employees. The

² The Guest Service Aides were originally in the petitioned-for unit. At the hearing, the Union stated it did not desire to represent this classification but later stated it was willing to proceed with an alternative unit that included or excluded the Guest Service Aides. (Tr. 17-18, 390-392).

³ The Company in this case argues that essentially a wall-to-wall unit (except for the Maintenance and Engineering employees) is appropriate.

Regional Director erroneously excluded the Guest Service Aides (who perform the traditional duties of bellmen) as “white collar” employees. This was a clear error, as the Guest Service Aides are “blue collar” employees who should have been included with the other “blue collar” employees in the unit. This error likely had a determinative effect on the outcome of the election, which was decided by a margin of five votes out of a total of 215 ballots cast (including challenged ballots that were opened because they were potentially determinative). There were seven Guest Service Aides excluded from the unit, and so their votes could have changed the outcome of the election.

Third, this case presents compelling reasons for the Board to revisit the blue collar/white collar distinction, as it produces artificial results that do not comport with the community-of-interest standard. If the community-of-interest standard had been properly applied, all Front Office department employees would have been included in the unit, regardless of whether they are considered to be “blue collar” or “white collar” employees.

For each and every one of the above reasons, all of which are discussed more fully below, the Board should grant Marriott’s petition for review.

III. BACKGROUND

On February 15, UNITE HERE Local 2 (the “Union”) filed a representation petition seeking to represent approximately 270 full-time and regular part-time employees working in the following job classifications at the San Francisco Airport Marriott Waterfront:

Attendants-Health Club; AYS Runners; Bellmen; Housekeepers; Housekeepers-Lobby; Housekeepers-Turndown; Housekeeping-Aides (Housemen); Housekeeping Laundry Attendants; Housekeepers; Project Room Team/Housekeeper Made Ready Employees; Attendants-Bar; Bartenders; Dining Room Attendants; Food Runners (Bar); Hanger [sic] Servers; Hosts; In-Room Dining Servers; In-Room Dining Operators; Beverage Runners; Cocktail Servers; Flight Servers-Lounge; Food & Beverage-M-Lounge; Cold-Side Attendants; Cooks; Dishwashers; Expeditors; Kitchen Purchasing Clerks; Kitchen Utility Employees; Cooks

and Lead Cooks; Lead Stewards; Aisle CSMs; Banquet Bartenders; Banquet Cooks; Banquet Housemen (CSM); Banquet Servers (Including Regular On-Call); Housekeeping Aides-Banquet; Starbuck Baristas.

A pre-election hearing took place on March 5 and 6, in San Francisco, California, where the parties litigated unit inclusion issues and other matters. During the hearing, the Company sought the inclusion of the Rooms Controllers, Front Desk Clerks, Guest Service Aides, Guest Service Representatives, Night Auditors, At Your Service Agents, and At-Your-Service Runners (collectively, the “Front Office” employees) as well as the Shipping & Receiving Attendant. The Company presented evidence and testimony in support of its position. The parties were provided with an opportunity to submit post-hearing briefs and did so.

On March 15, the Regional Director issued a Decision and Direction of Election finding that the Union’s petitioned-for unit was inappropriate. Instead, the Regional Director directed an election in an alternative unit, which added the AYS Runners to the petitioned-for unit. However, the Regional Director did not include the Guest Service Aides or the other Front Office employees in the unit, erroneously concluding that the employees in the alternative unit have a sufficiently distinct community of interest from the Guest Service Aides and the other Front Office employees. Accordingly, the Regional Director ordered a manual ballot election that took place on March 28.

The election yielded determinative challenged ballots which were opened and counted on April 12, based on the parties’ agreement. Based on a revised tally of ballots, consisting of 110 yes votes and 105 no votes, the Regional Director issued a Certification of Representative on April 18.

IV. SUMMARY OF THE RELEVANT FACTS

A. The Hotel's Operation

The San Francisco Airport Marriott Waterfront (the “Hotel”) is a large hotel located in Burlingame, California. The Hotel, located in close proximity to the San Francisco Airport, is an “airport hotel” which contracts with many airlines to provide rooms for airline customers and personnel. (Tr. 186, 277).

The Hotel is organized into several major departments, including Room Operations, Food & Beverage, Finance, Engineering, and Human Resources. (E. Ex. 1). Within those departments are smaller departments which are critical to the functioning of the major departments and the Hotel as a whole. (E. Ex. 1, Tr. 165). Particularly essential to the Hotel’s operations is the Room Operations department, which is comprised of the Housekeeping department and the Front Office department. Ali Lahip (“Mr. Lahip”), the Director of Room Operations, oversees and manages both departments as part of a single integrated operation, as described in greater detail below. (Tr. 25).

Lisa Kershner is the Hotel’s General Manager and is responsible for the overall administration and operation of the Hotel. (Tr. 163). Lisa Krone (“Ms. Krone”) was the Hotel’s Director of Human Resources from January 2013 to mid-November 2018.⁴ (Tr. 21). Ms. Krone testified that, as the Director of Human Resources, she was responsible for recruiting; hiring; onboarding; performance management; administering disciplinary actions; training and development; handling compliance issues; managing employee relations with respect to

⁴ Because of staffing complications, Ms. Krone remained acting Director of Human Resources at the Hotel until mid-January. (Tr. 21).

investigations, suspensions and terminations; overseeing the annual enrollment process for medical benefits; and completing recommendations for wages. (Tr. 21-22).

B. Room Operations Department

The Room Operations department is a single operation comprised of two smaller departments called the Front Office and Housekeeping departments, as reflected in the Hotel's organizational chart. (E. Ex. 1; Tr. 25-26). The Front Office is generally responsible for greeting guests, processing reservations, and checking guests in and out of the Hotel. The Front Office includes the AYS Agents, who communicate and dispatch other Hotel employees as necessary to make sure rooms are ready and guests' needs are met. (Tr. 46-4; Ex. 9). The Housekeeping department is functionally integrated with the Front Office, as the Housekeeping department prepares and cleans guest rooms prior to, during, and after guests are at the Hotel. (Tr. 172). As described below, because of the rapid guest turnover and low amount of spare rooms at any one time, the Housekeeping and Room Operations departments are highly integrated.

Since the Hotel is a large airport hotel which contracts with many airlines to provide large numbers of guest rooms, the Room Operations department is centered around the goal of ensuring the quick turnaround of rooms, which requires efficient processing and cleaning of the guest rooms. (Tr. 71, 172, 186). As a result, the Front Office and Housekeeping departments are part of a single integrated operation reporting to and led by Mr. Lahip. (Tr. 25). In fact, Mr. Lahip was offered his current position with the specific goal of making the Front Office and Housekeeping departments run efficiently as a single operation, particularly since he had previously served as the Senior Rooms Operations Manager for Housekeeping. (Tr. 164, 361). Mr. Lahip actively manages both departments and is assisted by, and receives direct reports from, Shane Okumura ("Mr. Okumura"), the Front Office Manager, and Amy Yoo ("Ms. Yoo"),

the Director of Service for the Housekeeping department. (Tr. 48, 165; E. Ex. 1). The Hearing Officer recognized that Mr. Lahip is an “active manager” who is extensively involved in supervising the Front Office and Housekeeping employees. (Tr. 371).

1. The Front Office, Generally

Almost all of the excluded employees at issue in this case are in the Front Office department. The Front Office department consists of the six non-supervisory classifications set forth below:

- **Front Desk Clerks/Agents (“Guest Service Representatives”)** are responsible for interacting with guests, responding to guest questions and other inquiries, assigning guests to rooms, processing guest room charges, and assisting other Front Office employees as necessary. (Tr. 48; E. Ex. 3). They are also responsible for communicating and coordinating with Housekeeping to track readiness of rooms for check-in, track changes in room status (*e.g.*, early check-out, late check out, unexpected stayover), and to report guest concerns. (E. Ex. 4 at 1-2).
- **PM Front Desk Clerks (“Night Auditors”)** have the same responsibilities as the Guest Service Representatives and are additionally responsible for auditing room rates, reviewing adjustments to room rates, and processing all Hotel receipts in the property management system. (Tr. 46; E. Ex. 3). They are similarly responsible for communicating and coordinating with Housekeeping to track readiness of rooms for check-in, track changes in room status, and to report guest concerns. (E. Ex. 4 at 1-3).

- **Guest Service Aides (“Bellmen”)** are responsible for assisting guests with their luggage, storing guests’ bags, delivering laundry, delivering items to guest rooms upon request, answering concierge questions, making reservations for guests, opening doors, and assisting guests enter/exit their vehicles. (Tr. 46, 171; E. Ex. 8 at 1).
- **Rooms Controllers** are responsible for maintaining the Hotel’s contractual accounts with airlines, processing reservations, controlling room inventory, and assisting the front desk when necessary. (Tr. 46; E. Ex. 5). They also coordinate with Housekeeping to track readiness of rooms for check-in, track changes in room status, report guest concerns, and inform Housekeeping of airline rooms that require early check in to ensure those rooms are cleaned on time. (Tr. 171-172; E. Ex. 5 at 2).
- **At Your Service Agents (“AYS Operators”)** are responsible for handling any and all internal and external calls at the Hotel and are referred to as the “the hub” of the Hotel. (Tr. 46). After receiving calls from guests, they contact the appropriate personnel (*e.g.*, Guest Service Aide, Housekeeping) and follow up with guests to ensure customer satisfaction. (E. Ex. 6 at 1). They are also responsible for checking in guests through the Hotel’s mobile check-in feature. (Tr. 46, 368-369; E. Ex. 6). They coordinate with Housekeepers to have items taken to or removed from guest rooms (by dispatching AYS Runners), communicate with AYS Runners to ensure that pre-arrival items have been delivered, and verify whether guests have checked out when asked, so Housekeepers can promptly clean rooms. (Tr. 174-176).

- **At Your Service Runners** are responsible for placing requested items such as rollaway beds, cribs, and refrigerators in guest rooms pre-arrival and responsible for delivering extra towels, bathrobes, toothbrushes and other items to guests post-arrival. (Tr. 46; E. Ex. 9). They report to the Housekeeping supervisors on a daily basis to coordinate the delivery of items to guest rooms. (Tr. 178-179).

2. Integration and Common Supervision

As the Director of Room Operations, Mr. Lahip oversees the day-to-day work of the Front Office and Housekeeping employees. (Tr. 164-165). Mr. Lahip is on the floor for much of the day, where he observes and interacts with the Front Office employees and Housekeeping employees on a daily basis. (Tr. 353). He attends the Housekeeping pre-shift meetings and also meets with the Front Office employees every morning. (Tr. 166, 168, 187, 307). Mr. Lahip actively participates in the resolution of employee issues in both the Front Office and Housekeeping departments. For example, given that he is on the floor much of the time, employees approach him with scheduling complaints and concerns. (Tr. 182). In these interactions, Mr. Lahip addresses the employee complaints or issues by actively involving himself in their resolution. (Tr. 182). Mr. Lahip also collaborates with Human Resources in the issuance of employee discipline for Front Office and Housekeeping employees. (Tr. 188-189).

In addition, Mr. Lahip assigns work tasks and supervises the performance of employees in both the Front Office and Housekeeping departments on a day-to-day basis. Mr. Lahip testified that with respect to the Front Office employees, he commonly: (1) directs them to stock the gift shop (Tr. 352); (2) directs them to stand in front of their desk during slow periods to more proactively greet and engage with nearby guests (Tr. 352); (3) corrects employees when their interactions with guests are not up to Marriott's high customer standards (Tr. 353-354); and

(4) ensures that the Hotel's policies, such as scheduling policies based on seniority, are administered consistently and fairly. (Tr. 354-355).

Mr. Lahip similarly supervises the Housekeeping employees (Tr. 181-189). By way of illustration, Mr. Lahip testified that he is commonly approached by housekeepers on the floor for assistance, such as when housekeepers have issues with their laundry or room keys or when they need tools, uniforms, and supplies. (Tr. 181- 182). In these instances, Mr. Lahip works to resolve these various housekeeping issues. (Tr. 181-182). He also observes Housekeepers in the performance of their daily work and instructs and trains them on proper procedure to correct mistakes. (Tr. 183-184). For example, Mr. Lahip personally trains housekeepers on an as-needed basis on how to make a bed and clean the shower doors using proper techniques. (Tr. 183-184, 187).

Mr. Lahip actively manages both the Front Office and Housekeeping departments on a daily basis, as both departments are included in the Room Operations department. The reason for this is simple – managing the Front Office and Housekeeping departments within the functionally integrated Room Operations department is essential to Hotel's business model. Mr. Lahip ensures that Housekeeping can turn rooms around in coordination with the Front Office so that the Front Office can then assign those rooms quickly to incoming guests. For example, in instances when Mr. Lahip notices that airline rooms have early check-in times that are not reflected in the housekeepers' assignment boards, Mr. Lahip informs the housekeeper so that the housekeeper cleans those rooms first. (Tr. 186).

The AYS Runners also exemplify the high degree of integration between the Front Office employees and the Housekeeping employees. The AYS Runners are classified as Front Office employees. (Tr. 46; E. Ex. 9). However, they are *not* supervised by the Front Office on an

ongoing basis during the workday. (Tr. 313-315). Instead, because they are so tightly integrated with the Housekeeping department, the AYS Runners are supervised by Ms. Yoo and the other Housekeeping supervisors, including sometimes Mr. Lahip, as is true with all other Housekeeping employees. (Tr. 178, 181 313-315). The AYS Runners work closely with the Front Office employees, most notably with the AYS Agents, who constantly dispatch the AYS Runners to guest rooms for a variety of reasons throughout the day. (Tr. 64, 180-181).

3. Contact and Interchange

The Front Office employees work in what is the “hub” of the Hotel because this is where employees communicate with different departments to ensure that the hotel runs smoothly and guests are satisfied. (Tr. 167). The level of contact between the Front Office and Housekeeping departments is critically important to this function, as the Hotel depends on the Front Office’s coordination with the Housekeeping department to ensure the quick turnaround and processing of rooms. (Tr. 186-187). This is so because the Hotel often operates at close to or at maximum occupancy rates, meaning it is often the case that the only rooms available for check-in are those which are being cleaned that same morning after the previous guests have departed. (Tr. 186-187). For example, the Front Desk Agents communicate with Housekeeping on a daily basis to notify them about the airline guests that will be checking in early to ensure that those rooms are cleaned first. (Tr. 172). They communicate with Housekeeping regarding the availability status of rooms whenever guests arrive before their scheduled check-in time so that those rooms are cleaned and turned over as soon as possible. (Tr. 172).

Rooms Controllers similarly coordinate with Housekeepers to track the availability status of rooms, to be aware of any delays in processing rooms, and to ensure certain rooms are available by designated check-in times. (Tr. 171-172; E. Ex. 5 at 2). This coordination allows

Housekeepers to prioritize their work and clean rooms in the most efficient way possible to meet the needs of the Hotel. (Tr. 172).

The Front Office employees are also in close contact with the Housekeeping department to ensure customer satisfaction. For example, Housekeepers will call AYS Agents on a daily basis to ask if a guest can be provided with certain requested amenities. (Tr. 174-175, 180-181). The AYS Agents, in turn, direct the AYS Runners on a daily basis to bring requested items to guest rooms. (Tr. 174-175). Similarly, Housekeepers will call AYS Agents on a daily basis so that they can send an AYS Runner to remove an item from a particular room based upon a guest's request, such as a rollaway bed. (Tr. 174). Housekeepers, in turn, will call AYS Runners to verify whether a guest has checked out of a particular room in order to clean that room as expediently as possible. (Tr. 174-175).

In addition, the Front Office employees also have substantial contact with other departments. For example, the Front Office employees assist servers working in the Hotel's Flight 101 Lounge whenever there is a problem with a guest's bill, such as when the guest leaves the wrong (or no) room number. (Tr. 175-176). Likewise, the Front Office employees frequently coordinate with AYS Runners to deliver amenities to guests. (Tr. 176). The Guest Service Aides sometimes ask for the assistance of the Lobby Housekeeper to address certain issues, such as cleaning up a large spill on the lobby floor. (Tr. 176).

The Guest Service Aides perform what is traditionally considered "blue collar" work, given that they are primarily engaged in completing physical tasks, such as assisting guests with their luggage, storing guests' bags, and delivering luggage, laundry, or other large items to guest rooms upon request. (Tr. 171, 317, E. Ex. 8). Although it is primarily a "blue collar" job, the Guest Service Aides work closely with the rest of the Front Office. The Guest Service Aides

attend the same stand up meetings as the rest of the Front Office, and they are supervised by Mr. Lahip and Mr. Okumura, the Front Office Manager. (Tr. 190, 205-206).

Front Office employees are staffed around the clock, ensuring that every employee at the Hotel has the opportunity to interact with the Front Office employees on a regular and daily basis. (Tr. 50). There are times when the Front Office employees are called upon to handle what would normally be the tasks and duties of other departments, such as making middle-of-the-night room food runs or retrieving a guest's forgotten boarding pass and ensuring that he or she receives it at the airport. (Tr. 106).

As shown by this record evidence, the Front Office employees, along with employees in the Housekeeping department, and other employee classifications in the petitioned-for unit, play a crucial, inseparable role in the day-to-day operation and success of the Hotel.

4. Shared Working Conditions

In addition to the supervision they receive and the assistance they provide, the excluded Front Office employees are also connected to employees who were included in the alternative unit by virtue of their shared working conditions. Most of the Hotel's employment policies and processes, including hiring and discipline, are governed by overarching Marriott policies and are administered by the Hotel's Human Resources department. (Tr. 21). For example, all of the Hotel's employees are subject to the rules and policies contained in Marriott's employee handbook, as well as other Hotel-specific policies – *i.e.*, Local Standard Operating Procedures ("LSOPs"). (Tr. 32-33). All hotel employees are subject to the same disciplinary consequences when they commit violations of these rules and policies. (Tr. 30). Employees receive identical training on many of these rules and policies upon hire, including harassment prevention, preventing human trafficking, and dealing with guests under the Americans with Disabilities Act. (Tr. 31).

Hotel employees also share many of the same wages and benefits. All job titles belonging to hourly Hotel employees – including the Front Office employees and the employees in the petitioned-for unit – are placed on a common wage scale, which is set by Marriott’s Area Director of Human Resources based on Ms. Krone’s initial recommendation. (Tr. 26). Hotel employees are paid hourly and on a weekly basis, regardless of their department, and all non-managerial employees are required to record their time on the Kronos time system. (Tr. 31). All Hotel employees, regardless of department, are also eligible to receive substantially the same benefits package, including medical coverage. (Tr. 27).

Also like many of the employees in the petitioned-for unit, Front Office positions do not require any minimum level of training, education, or experience. (Tr. 190-191; E. Ex. 3). This is also the case for employees in the Housekeeping department, as well as Dishwashers and Banquet Servers. (Tr. 190-191). In addition, the Guest Service Representatives and Night Auditors use credit card readers and the same Point of Sale System – Micros – as many employees in Food & Beverage to perform their daily tasks. (Tr. 271, 279).

In sum, the Front Office employees operate at the epicenter of the Hotel. They share many of the same terms and conditions of employment as the employees in the petitioned-for unit and frequently interact with the petitioned-for employees.

5. The Shipping & Receiving Attendant

The Hotel employs one Shipping & Receiving Attendant, who is responsible for, among other things, delivering merchandise to the appropriate department; receiving, storing, shipping, and delivering outgoing departmental packages and mail; ensuring safekeeping of packages; and communicating with guests regarding received packages. (E. Ex. 7).

The Shipping & Receiving Attendant handles mail packages, departmental supply deliveries, or Hotel-wide inventory across many departments. (Tr. 228-231). In the performance

of these duties, the Shipping & Receiving Attendant by necessity communicates across all departments, such as the Front Desk and anyone who receives mail on a daily basis, including guests. (Tr. 228-231). For example, if a guest approaches the Front Desk or Guest Service Aide Desk to inquire about a package, the Shipping & Receiving Attendant interacts with employees at those desks and the guest regarding the package. (Tr. 238). The Shipping & Receiving Attendant utilizes the Property Management System software also used by the Guest Service Aides and AYS Agents. (Tr. 257-258).

The Shipping & Receiving Attendant, like the Front Office employees and the other employees in the petitioned-for unit, is subject to all of the same Marriott and Hotel rules, policies, processes, and training. (Tr. 32). The Shipping & Receiving Attendant is an hourly-paid employee whose wage is based on the common wage scale and who is eligible for the same benefits as everyone else. (Tr. 26). Also like the Front Office employees and others, there is no requirement that an applicant for the Shipping & Attendant position have any minimum level of education, experience, or training. (E. Ex. 7).

V. ARGUMENT

The Board should grant review because the Regional Director departed from Board precedent finding wall-to-wall units to be appropriate in hotels that have a high degree of functional integration, as in this case.

Additionally or alternatively, the Board should grant review because this case presents compelling reasons to reconsider the distinction between “white collar” and “blue collar” employees. It is often not a meaningful distinction in modern hotels, and it produces results that do not comport with the community-of-interest factors. In this case, the Regional Director clearly erred in concluding that the Guest Service Aides are white collar employees who should be excluded from the unit, even though they perform traditional blue collar work and share a

community of interest with the other blue collar employees who were included in the unit. This error was likely outcome-determinative in a very close election, as the Guest Service Aides alone could have affected the outcome of the election.

Furthermore, the Regional Director clearly erred in excluding the other Front Office employees from the unit. All of the Front Office employees should have been included in the unit based on the community-of-interest factors, regardless of whether they are categorized as “blue collar” or “white collar” employees.

A. The Regional Director’s Decision Departs from Established Precedent Finding Wall-to-Wall Units Appropriate in the Hospitality Industry.

By excluding the Front Office employees and Shipping & Receiving Attendant from the alternative unit, the Regional Director departed from Board precedent finding that a wall-to-wall unit is appropriate in hotels with a high degree of functional integration.⁵

As a general matter, the Board makes case-by-case unit determinations in the hospitality industry utilizing the traditional community-of-interest factors. *77 Operating Co.*, 160 NLRB 927, 928-930 (1966) (overturning *Arlington Hotel Co.*, 126 NLRB 400, 404 (1960) where the Board applied the general rule of viewing a wall-to-wall unit in all hotels as the only appropriate unit). In weighing the relevant community of interest factors, the Board has deemed wall-to-wall units appropriate in cases where hotels have a high degree of functional integration. See, e.g., *Servico, Inc.*, 214 NLRB 651, 652 (1974) (finding a wall-to-wall unit of hotel employees appropriate where employees were functionally integrated, frequent contact amongst the employees existed, and employees had common working conditions); *Atlanta Hilton And*

⁵ In this case, the Company seeks a nearly a wall-to-wall unit, but does not seek inclusion of the Maintenance and Engineering employees.

Towers, 273 NLRB 87, 91 (1984) (an overall unit of employees was appropriate⁶ in a convention hotel with highly integrated functions); *Ramada Beverly Hills*, 278 NLRB 691, 693 (1986) (same); *The Westin Hotel*, 277 NLRB 1506, 1507-1508 (1986) (unit consisting solely of maintenance workers was not appropriate because extensive contact, integration of duties, and similar terms and conditions of employment among all hotel employees outweighed the lack of interchange).

Atlanta Hilton is instructive. In that case, the employer was a large convention hotel. 273 NLRB at 88. The hotel's departments were highly centralized and designed to cater towards the high volume of convention business and special needs of its convention guests. *Id.* This departmental organization was necessary to provide service in accordance with the hotel's contractual arrangements. *Id.* The union petitioned for, and the regional director certified, two separate bargaining units. *Id.* at 87. Upon review, the Board held that only an overall unit, excluding property operations employees, confidential employees, guards, and supervisors, was appropriate. *Id.* at 91. The Board explicitly rejected the regional director's finding that "there is not such a high degree of functions and mutuality of interest" between the employees in the sought-after units and the other hotel employees to require a single combined unit. *Id.* at 90. In finding that an overall unit was warranted, the Board reasoned that the hotel was a highly integrated operation with departments that closely coordinated with each other to serve the needs of conventions. *Id.* at 90.

Just like in *Atlanta Hilton*, it is clear that the Hotel in the instant case operates through closely coordinated departments, it has many contracts with businesses to provide pre-booked rooms, and departmental coordination is necessary to enable the Hotel to meet its contractual

⁶ Technically, the overall unit which the Board found to be appropriate excluded property operations employees. *Id.*

obligations to those businesses. Specifically, the Hotel is a busy airport hotel that operates a highly integrated operation centered around Room Operations (comprised of both the Front Office and Housekeeping departments) to efficiently clean and quickly process rooms to serve its large number of airline contracts and guests. The high level of coordination between the Front Office and Housekeeping departments is necessary to ensure the efficient turnover of rooms, which is integral to the Hotel's ability to meet its contractual obligations with airlines.

In the Decision, the Regional Director acknowledged that "the employees in the excluded classifications and those in the alternative unit are functionally integrated, enjoy a substantial degree of contact, share similar terms and conditions of employment, and have some degree of shared overall supervision at the highest levels." (Decision, 12). Yet, the Regional Director erred by failing to find that this high level of operational integration necessitates the inclusion of the Front Office employees and Shipping & Receiving Attendant in the unit. In failing to include these employees in the unit, the Regional Director departed from the Board precedent discussed above. Accordingly, the Board should grant the instant Request for Review on this basis.

B. Compelling Reasons Exist for the Board to Reconsider the Blue Collar/White Collar Distinction, Which Produced a Clearly Erroneous and Potentially Outcome-Determinative Result in This Case.

The Regional Director erroneously relied on the blue collar/white collar worker distinction as a basis to exclude the Front Office employees from the alternative unit. (Decision, 12). First, this case presents compelling reasons for the Board to reconsider the blue collar/white collar worker distinction relied upon by the Regional Director. This distinction often does not make sense in modern, highly integrated hotels. Second, it was applied in a way that produced artificial results in this case.

The Regional Director excluded the Front Office employees and the Shipping and Receiving Attendant based on a finding that a majority of their work is “white collar” in nature, whereas the work of the included employees is “blue collar” in nature. The Regional Director recognized that the “two exceptions are the Guest Service Aide and the AYS Runner position.” (Decision, 10). Despite finding that both positions perform “blue collar” work, the Regional Director included AYS Runners but excluded the Guest Service Aides from the unit. This was an erroneous and potentially outcome-determinative conclusion, and it highlights why the blue collar/white collar distinction should be reconsidered.

1. Legal Standard.

In applying the traditional community-of-interest test in the hospitality industry, the Board sometimes distinguishes between “blue collar” manual work (*e.g.*, housekeeping cleaning, luggage carrying, and maintenance duties) from “white collar” work (*e.g.*, clerical duties). The Board uses this distinction as a way of illustrating the differences in work skills and as a basis on which to delineate a less than wall-to-wall unit, particularly in situations where petitioned-for and excluded classifications do not have overlapping job functions or where employees otherwise do not share other common working conditions. *See, e.g., Dinah’s Hotel & Apartments*, 295 NLRB 1100, 1101 (1989) (relying on the blue collar/white collar distinction, the Board found the front desk employees did not share a sufficient community of interest with other employees who engaged in more manual work); *The Regency Hyatt House*, 171 NLRB 1347, 1349 (1968) (the Board excluded manual operating employees from a unit of clerical personnel by noting the differences in the nature of their duties and other conditions of employment, and by further noting the blue collar/white collar distinction).

2. There Are Compelling Reasons for the Board to Reconsider the Blue Collar/White Collar Distinction.

This case presents compelling reasons for the Board to reconsider the blue collar/white collar distinction, especially in hotels where employees have a high degree of functional integration. Categorizing job skills in terms of blue collar or white collar functions does little to reveal a community of interest (or lack thereof) amongst employees whose work is highly integrated. As shown by the record evidence in this case, the “blue collar” Housekeeping employees and the “white collar” Front Office employees closely coordinate with each other as part of the Room Operations department throughout the day:

- Room Controllers communicate with the Housekeeping department to inform them of the airline rooms that will require early check in to ensure those rooms are cleaned before the airline guests check in. (Tr. 171-172).
- Room Controllers communicate with the Housekeeping department to rush or prioritize cleaning rooms where guests have checked in prior to the room being ready. (Tr. 172).
- AYS Agents constantly communicate with the AYS Runners to ensure that items requested by guests are sent to the guest room prior to check-in. (Tr. 176).
- Housekeepers communicate with AYS Agents to request that they send the AYS Runner to remove certain items from a room, such as rollaway beds. (Tr. 174).
- Housekeepers communicate with AYS Agents to confirm whether a room has been checked out which has a “Do Not Disturb” sign hanging on the door. (Tr. 174-175).

The blue collar/white collar distinction produces artificial results in cases such as this. As the record in this case shows, the Housekeeping and Front Office employees interact throughout the day in order to efficiently clean and process rooms to ensure that the Hotel meets

its contractual obligations with its airline customers. Distinguishing between white collar and blue collar workers when there is such a high degree of functional integration makes little sense in applying the community-of-interest standard. The community-of-interest standard is more accurately assessed in terms of how employees function together as opposed to attempting to differentiate their work along blue collar/white collar lines. The Board should grant the Company's Request for Review to reconsider this distinction and its artificial application in this case.

3. The Regional Director Erroneously Excluded the Guest Service Aides As White Collar Workers.

In applying the blue collar/white collar distinction in this case, the Regional Director clearly erred in finding that the Guest Service Aides are white collar workers who should be excluded from the unit. The Board should grant review to correct this error, which could have affected the outcome of this very close election.

The Regional Director acknowledged that the Guest Service Aides perform blue collar work, like the AYS Runners and the other employees who were included in the unit. (Decision, 10). Yet, the Regional Director excluded the Guest Service Aides based on a finding that "the majority of the Guest Service Aides' tasks are white-collar in nature" and the fact that they are trained to use the Hotel's electronic system, like other Front Office employees. (Decision, 10). This strained application of the blue collar/white collar distinction exemplifies why it should be reconsidered.

There is no question that a substantial portion of the Guest Service Aides' work is traditional "blue collar" manual work (*e.g.*, handling luggage as bellmen do in most hotels). The fact that the Guest Service Aides also perform some "white collar" work in this functionally integrated hotel ("making reservations for guests, assisting with check-ins, and making

recommendations for activities”) does not diminish the fundamentally “blue collar” nature of their luggage handling work, which consists of lifting and hauling of bags throughout the Hotel. The Decision also ignores the other “blue collar” duties that Guest Service Aides perform, including delivering laundry and large items to guest rooms upon request, opening doors, and assisting guests/visitors entering or exiting their vehicles. (Tr. 46, 171; E. Ex. 8 at 1). Given all of these “blue collar” duties, the Regional Director clearly erred in excluding the Guest Service Aides from the unit.

The Regional Director also erred by relying on the Guest Service Aides’ training on the electronic property management system as a basis for concluding that they are more “white collar” than “blue collar.” The Guest Services Aides receive less training on the property management system compared to the Guest Services Representatives, and they only use the system to look up guests. (Tr. 285). The Flight 101 Servers and Baristas, whom the Regional Director deemed to be “blue collar” workers by virtue of their inclusion in the unit, also use the same system and, in addition, they use the Micros point-of-sale system which is integrated with the property management system to comprise the Hotel’s Full Service Property Management System. (Tr. 271-272; 356-357). Moreover, the Guest Service Aides perform more arduous manual labor than the Flight 101 Servers and Baristas, yet the Regional Director artificially excluded the Guest Service Aides as “white collar” workers.

Lastly, it is important to note that the Union represents Guest Service Aides (otherwise known as “bellmen”) at eight other similar “Class A” hotels in the San Francisco area. (Tr. 155-156). The failure to include the Guest Service Aides in the alternative unit at this hotel on the basis of their “white collar” classification, when the Hotel represents this same classification at other similar hotels in the San Francisco area, further shows that the white collar/blue collar

worker distinction is artificial and does not support the exclusion of the Guest Service Aides here. See, e.g., *Mirage Casino*, 338 NLRB 529, 534 (2002) (area practice in hotel industry relevant to community-of-interest analysis in determining whether separate carpenter unit was warranted).

In sum, the Regional Director clearly erred by ignoring and diminishing the nature and extent of the Guest Service Aides' blue collar work and by failing to note the lack of meaningful distinctions between the Guest Service Aides and the other blue collar workers who were included in the unit. This was a prejudicial error that could have affected the outcome of the election.

C. The Regional Director Erred in Excluding the Other Front Office Employees from the Unit.

The Regional Director erred in applying the blue collar/white collar distinction to exclude the other Front Office employees from the unit, which also likely affected the outcome of the election. This further demonstrates how the blue collar/white collar distinction produces results that do not comport with the community-of-interest standard. The Board should grant the Company's Request for Review on this additional basis.

1. Legal Standard.

In cases where unit appropriateness is challenged, the Board examines "whether the employees in [the] petitioned-for group share a community of interest *sufficiently distinct* from the interests of employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit." *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 6 (2017) (emphasis added). In making this determination, the Board considers whether the employees (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform unit work; (4) have frequent contact with

other employees; (5) interchange with other employees; (6) have distinct terms and conditions of employment; and (7) are separately supervised. *Id.* at 6 (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)) (reaffirming the Board’s traditional community-of-interest factors and emphasizing that excluded employees should remain excluded only if their interests are sufficiently distinct from those of the petitioned-for unit).

The Board has also recently made clear that it “may find that the exclusion of certain employees renders the petitioned-for unit inappropriate even when excluded employees do not share an ‘overwhelming’ community of interest with employees in the petitioned-for unit.” *See PCC Structural, Inc.*, 365 NLRB at 9. Rather, the Board will find that excluded employees should remain excluded only if “the petitioned-for employees share a community of interest *sufficiently distinct* from employees excluded from the proposed unit to warrant a separate appropriate unit.” *Id.* (emphasis added). Further, in the hotel industry, the Board applies the traditional community-of-interest criteria on a “case-by-case basis.” *See The Westin Hotel*, 277 NLRB at 1507–08.

2. The Regional Director Improperly Concluded that Common Supervision Weighs in Favor of Finding that the Front Office Employees Have a Distinct Community of Interest.

The Regional Director erred by ignoring or diminishing record evidence of Mr. Lahip’s day-to-day supervision to conclude that the Front Office employees do not share common day-to-day supervision with the employees who were included in the alternative unit. (Decision, 10). The Regional Director erred by diminishing Mr. Lahip’s day-to-day supervision over both the Housekeeping and Front Office employees. In this respect, the Regional Director stated that “although Lahip directs some employees at random to perform or prioritize work one to three times per day, true day-to-day supervisors perform these tasks much more frequently.” (Decision, 10). As the record evidence below makes clear, Mr. Lahip exercises day-to-day

supervision over the Housekeeping and Front Office employees, irrespective of the fact that he is not their immediate supervisor.

The Regional Director ignored that Mr. Lahip exercises true day-to-day supervision over the Housekeeping and Front Office employees, as he is actively involved in directing and assigning their work to ensure the seamless turnover of rooms. For example, in instances when airline rooms have early check-in times, and those times are not reflected in a Housekeeper's daily assignment boards, Mr. Lahip instructs the Housekeeper regarding which room to clean first. (Tr. 186). Once cleaned, the Front Office can assign the airlines rooms to its guests in order to better meet its contractual obligations. (Tr. 186). Conversely, in instances when Mr. Lahip knows that there are rooms available, and he learns that AYS Operators are instructing Housekeepers to clean certain rooms on rush status, Mr. Lahip intervenes and ensures that guests can be checked into other rooms in the same category to avoid having the Housekeepers unnecessarily clean rooms in a hurry. (Tr. 362). He further ensures housekeepers are not assigned a disproportionate number of airline rooms, many of which require early check-in. (Tr. 362). Likewise, when there are too many rooms available, Mr. Lahip instructs the Rooms Controller to drop the room rates so that the rooms are more likely to be booked.

In addition to assigning and reassigning work in the manner described above, Mr. Lahip actively supervises the Housekeeping and Front Office employees in other respects. Mr. Lahip actively supervises the Housekeeping employees in the following ways:

- Mr. Lahip helps Housekeepers overcome daily obstacles to allow them to perform their daily work, such as by fixing issues with malfunctioning key cards or by following up on their requests for housekeeping supplies. (Tr. 181-182).

- Housekeepers approach Mr. Lahip to voice concerns with scheduling issues and in turn, Mr. Lahip works with the Housekeeper and the immediate supervisor to reschedule them as appropriate if warranted. (Tr. 182).
- Mr. Lahip frequently inspects Housekeepers' work, identifies mistakes, and addresses those concerns with the appropriate housekeeper to ensure the mistakes are corrected. For example, Mr. Lahip testified that when he conducts room inspections, there are times he finds that a Housekeeper failed to pick up hair. (Tr. 183-184). In such a situation, he talks to the Housekeeper to ensure the work is performed correctly (*e.g.*, vacuuming or using hair rollies). (Tr. 183-184).
- Mr. Lahip explains changes in work procedures to Housekeepers. (Tr. 183). For example, after the Hotel changed its method to improve the way housekeepers should make beds, Mr. Lahip spoke to different Housekeepers on the floor to ensure they understood the new bed-making procedure. (Tr. 183). He even has inspected beds to ensure that the Housekeepers applied the new bed-making procedure correctly, and he provided them with feedback. (Tr. 183).
- Mr. Lahip attends the Housekeepers' daily stand up meetings, where he provides training. For example, he trains the Housekeepers on proper bed-making procedures, how to clean shower doors correctly, and other daily cleaning tasks. (Tr. 187-188).
- Mr. Lahip collaborates with Human Resources in the issuance of discipline to Housekeepers. (Tr. 188-189).

Similarly, Mr. Lahip actively supervises the Front Office employees in the following

ways:

- Every morning, Mr. Lahip checks in with the Front Desk Clerks and inquires whether they have any questions or concerns regarding topics covered during daily stand-up meetings. (Tr. 168).
- Since Mr. Lahip is frequently at the Front Office, Front Office employees approach him to resolve a variety of issues. For example, Mr. Lahip testified that Front Office employees sometimes ask him why they are scheduled to work on a particular day or time. (Tr. 351). Rather than involve a direct supervisor, Mr. Lahip addresses the scheduling issue directly with the Front Office employee by explaining why he/she was scheduled on a particular day or time. (Tr. 351).
- Mr. Lahip oversees work performed by the Front Office employees and assigns them tasks as appropriate, sometimes at least three times a day. (Tr. 351-352). For example, whenever Mr. Lahip observes that an airline check-in is not processed correctly, such as when the check-in lacks the guest's name, he instructs the Front Desk Clerks to update the information in the system. (Tr. 351-352). Other examples include when Mr. Lahip directs Front Desk Clerks to come to the front of the desk and greet guests or stock the gift shop. (Tr. 352).
- Mr. Lahip ensures that Front Office employees comply with Front Office policy, standards, and procedures. (Tr. 352). For example, Mr. Lahip listens when Front Office employees interact with guests to ensure that the employees' verbiage complies with Marriott standards, and if it does not, Mr. Lahip will pull the employee aside and correct the mistake to ensure compliance. (Tr. 353, 354).

As the above evidence makes clear, and contrary to the Regional Director's findings, Mr. Lahip exercises true day-to-day supervision over Housekeeping and Front Office employees.

Although Ms. Yoo and Mr. Okumura are the direct supervisors for the Housekeeping department and Front Office department, respectively, this does not diminish the fact that Mr. Lahip also supervises employees in the performance of their work on a day-to-day basis. The Regional Director erred by ignoring or discounting the above record evidence to find that Mr. Lahip does not exercise true day-to-day supervision over the Rooms Operations department. This finding is clearly erroneous on the record and directly calls into question the validity of the unit.

3. The Regional Director Misapplied the Community-of-Interest Test By Improperly Weighing Differences in Job Skills and Employee Interchange to Exclude the Front Office Employees.

The Regional Director misapplied the community-of-interest test by elevating the job skills and interchange factors above the other community-of-interest factors (*i.e.*, the degree of functional integration, amount of employee contact, and similar terms and conditions of employment), which clearly weighed in favor of including the Front Office employees in the unit. Notably, the Regional Director found:

[A]lthough the employees in the excluded classifications and those in the alternative unit are functionally integrated, enjoy a substantial degree of contact, share many similar terms and conditions of employment, and have some degree of shared overall supervision at the highest levels, the Board has repeatedly found these factors to be unavailing when the other factors discussed above [*i.e.*, employee interchange and similarity in skills] are not met.

(Decision, 12).

Essentially, the Regional Director found that, even though the other community-of-interest factors weighed in favor of including the Front Office employees in the unit, they should not be included unless there is also (1) a substantial degree of employee interchange, and (2) similarity in job skills. This is a misapplication of the community-of-interest test because in adopting this rigid view, the Regional Director essentially failed to afford proper weight to *all* relevant factors.

Board law holds that none of the community-of-interest factors are dispositive. *See Publix Super Mkts., Inc.*, 343 NLRB 1023, 1027 (2004) (finding no separate community of interest between two groups of employees because, *inter alia*, the groups evidenced “substantial functional integration”). In elevating the employee interchange and similarity of skills factors above all others, the Regional Director relies on *Lodgian, Inc.*, 332 NLRB 1246 (2000), *Omni International Hotel of Detroit*, 283 NLRB 475 (1987), and *Dinah’s Hotel & Apartments*, 295 NLRB 1100 (1989). All of these cases are distinguishable from this case.

In *Lodgian, supra* at 1246, the Board upheld a unit of housekeeping, food and beverage, and other employees, which excluded front office employees. However, it is important to note that in *Lodgian*, there was no evidence of common supervision between the included and excluded employees. *Id.* at 1251-1252. This differs from the instant case because, as explained above, there is substantial evidence that Mr. Lahip exercised a significant degree of day-to-day supervision of both Housekeeping and Front Office employees. Accordingly, *Lodgian* is not an analogous case. The community-of-interest factors – in their totality – dictate a finding that the Front Office employees should have been included in the unit in this case.

In *Omni International Hotel of Detroit*, 283 NLRB at 475-476, a Board majority found a unit comprised solely of hotel maintenance engineers to be appropriate where the engineers had unique skills, had no instances of temporary transfer, and were under *separate immediate supervision*, all while having frequent contact and similar wages and benefits with other employees. The Rooms Division Head commonly supervised the maintenance engineers as well as six different departments. *Id.* at 476. The Board, in finding the maintenance engineers had a separate community of interest from the other employees, partly relied on the fact that the maintenance engineers were separately supervised without examining either the nature or degree

of the Room Division Head's day-to-day supervision. This case has no bearing here because there is no contention by any party that the engineering/maintenance employees should have been included in the unit in this case. The question in this case is whether the Front Office employees should have been included based not only on the extensive evidence of common, day-to-day supervision by Mr. Lahip, but also on the other community-of-interest factors.

Dinah's Hotel & Apartments is similarly distinguishable. The Board in that case found a unit consisting solely of front desk employees to be appropriate because there were "extremely infrequent" incidents of job overlap and interchange and separate immediate supervision, despite routine contact and common wages and benefits. *Id.* at 1100-1101. There too, neither the Board nor the underlying Regional Director decision examined whether the centralized supervision shared by the front desk and other employees was meaningful day-to-day supervision or whether it was merely nominal, indirect supervision. Because there is extensive evidence of common day-to-day supervision in this case, *Dinah's Hotel* is distinguishable.

Thus, the cases relied upon by the Regional Director are not persuasive with respect to the degree of common supervision as well as the other community-of-interest factors. There is substantial evidence to show that Mr. Lahip exercised active day-to-day supervision over both Housekeeping and Front Office employees, in addition to the other relevant community-of-interest factors. The Regional Director improperly gave determinative weight to the job skill and employee interchange factors, despite the presence of many other factors weighing in favor of including the Front Office employees, whose votes could have affected the outcome of the election.

The community-of-interest factors, when properly weighed, show that a community of interest exists between the employees in the alternative unit and the excluded Front Office

employees. This is particularly true for the Housekeeping and Front Office employees, who are highly functionally integrated, have daily contact with each other, share common supervision, and have identical terms and conditions of employment. By only including part of Room Operations in the alternative unit (*i.e.*, Housekeeping employees) and excluding the other half of Room Operations (*i.e.*, Front Office employees), the Regional Director created a fractured unit. The failure to include the Front Office employees in the same unit as the Housekeeping employees disrupts the functional integration of the Room Operations department, which is a department whose high degree of coordination is integral to the operations of this busy airport hotel.

VI. CONCLUSION

For all the foregoing reasons, the Company respectfully requests for the Board to grant its Request for Review of the Regional Director's Decision.

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Dated: May 2, 2019

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Marriott Hotel Services, Inc.*

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

MARRIOTT HOTEL SERVICES, INC.

Employer

and

Case 20-RC-236046

UNITE HERE LOCAL 2

Petitioner

DECISION AND DIRECTION OF ELECTION

Unite Here Local 2 (Petitioner) seeks to represent a unit of 270 housekeeping, restaurant, banquet, and culinary employees employed by Marriott Hotel Services, Inc. (Employer) at the San Francisco Airport Marriott Waterfront Hotel (Hotel) located at 1800 Old Bayshore Highway in Burlingame, California. The Employer contends that the petitioned-for unit is not appropriate and that the only appropriate unit must include At-Your-Service Runners (AYS Runners), At-Your-Service Agents (AYS Agents), Guest Service Aides, PM Front Desk Clerks/ Night Auditors, Room Controllers, Front Desk Clerks/Agents (Guest Service Representatives), and the Shipping and Receiving Attendant. The Employer also contends that all “leads” are supervisors as defined by Section 2(11) of the Act, including the Lead Cook, Kitchen Lead Storekeeper, Housekeeping Team Lead, Lead Baker, and the Dishwasher/Utility Lead. As indicated in the Acting Regional Director’s prehearing Order, resolution of the Leads’ eligibility and inclusion shall be deferred to post-election proceedings, if necessary.

Petitioner maintains that the petitioned-for unit is an appropriate unit but would also be willing to represent a unit, if found appropriate, that includes the petitioned-for employees and any combination of the AYS Runners, Guest Service Aides, and the Shipping and Receiving Attendant. The Petitioner is not willing to represent a unit that includes AYS Agents, PM Front Desk Clerks/Night Auditors, Room Controllers or Guest Service Representatives.

A hearing officer of the Board held a hearing in this matter and the parties submitted post-hearing briefs arguing their respective positions. As described below, based on the record and relevant Board cases, including the Board’s decision in *PCC Structural*s, 365 NLRB No. 160 (2017), I find that the petitioned-for unit is not appropriate, and that in order to be appropriate, it

must also include the AYS Runner classification. The Petitioner has agreed to proceed to an election in this alternative unit, and I shall direct an election therein accordingly.

I. THE EMPLOYER'S OPERATIONS

A. DEPARTMENTAL ORGANIZATION & SUPERVISION

The Employer's hotel is in close proximity to the San Francisco International Airport. The Hotel is organized into the following departments relevant to the issues here: Front Office, Services (Housekeeping), Event Operations (Banquets), Culinary, Restaurants, and Loss Prevention.¹ Each Department is managed by a Department Head and lower-level managers.

The Front Office is managed by Front Office Manager/Front Office Department Head Shane Okumura, Assistant Front Office Manager Linda Marcelus, Assistant Rooms Managers Fred Eiseman and Alice Poon, and Rooms Voyager Andrew Espiritu. Okumura oversees the day-to-day Front Office operations, ensures compliance with all Front Office policies and procedures, and collaborates with Human Resources about the discipline of Front Office employees. He is responsible for scheduling and approving leave requests in the Department. The lower-level Front Office supervisors conduct annual reviews of the Front Office employees. Employees in the Front Office Department include AYS Agents, Guest Service Aides, PM Front Desk Clerks/Night Auditors, Room Controllers, and Guest Service Representatives. AYS Runners are also nominally in the Front Desk Department, however, there is confusion in the record regarding whether AYS Runners are supervised by Shane Okumura, Director of Services Amy Yoo (the Housekeeping Department head), or both. Former Human Resources Director Lisa Krone testified she "believed" Okumura and the other front office supervisors supervised the AYS Runners, but they were also directed by Yoo and the Housekeeping Supervisors. In contrast, Director of Room Operations Ali Lahip testified that Yoo supervised the AYS Runners on a day-to-day basis. Specifically, Lahip testified that Yoo and the Housekeeping supervisors were responsible for scheduling the AYS Runners, resolving disciplinary issues with the AYS Runners, and performing performance appraisals for AYS Runners. In fact, Lahip even referred to the AYS Runner as the "Housekeeping Runner" in his testimony. Further, although Krone testified that AYS Runners worked behind the front desk, Lahip testified he was familiar with the AYS Runner position because he visits Housekeeping on a daily basis and "the housekeeping runner is there."

Housekeeping is managed by Director of Services Amy Yoo, Rooms Manager Alex Gomez, and Rooms Voyager Ryan Rama. Yoo oversees the day-to-day housekeeping operations, ensures room cleanliness, collaborates with Human Resources about the discipline of housekeeping employees, runs daily department meetings, and conducts annual reviews for the housekeeping employees. She is also responsible for scheduling and approving leave requests in that department. Employees in the Housekeeping Department include housekeepers, housekeeping aides, overnight

¹ There are other departments, such as Event Planning, Engineering and Finance, which are not relevant to my Decision.

housekeeping aides, lobby attendants, and pool and health club attendants. Although Front Office supervisors occasionally direct lobby attendants to clean up spills, they are otherwise not involved in the day-to-day supervision of housekeeping employees.

The Culinary Department is managed by Executive Chef Dion Hawkins. Employees in the Culinary Department include cooks, station attendants, cafeteria attendants, expeditors, storeroom attendants, kitchen purchasing clerks, dishwashers, and utility stewards.

The Banquets Department is managed by Director of Event Operations Sergio Hernandez. Employees in the Banquets Department include banquet servers, banquet bartenders, and banquet housekeeping aides.

The Restaurants Department is managed by Fazle Sobhan. Employees in the Restaurant Department include the hosts, servers, food runners, bar attendants, baristas, room service operators, and in-room dining servers that work in the Hanger Steakhouse, Flight 101 Lounge, Starbucks, M-Lounge, and Room Service.

The Loss Prevention Department is managed Director of Loss Prevention Noel Keegan. Employees in this department include the Shipping and Receiving attendant. The Shipping and Receiving Attendant is typically supervised by the Loss Prevention Supervisor, however that position is currently vacant. Until that position is filled, the Attendant is supervised by Director of Loss Prevention Noel Keenan.

Each department is also under the oversight of an Executive Committee Level Manager who reports directly to the General Manager. The Housekeeping and Front Office Departments are under the oversight of the Director of Room Operations Ali Lahip. Kitchen, Banquets, and Restaurants are under the oversight of the Director of Food & Beverage Efrain Sanchez. The Director of Human Resources oversees the Loss Prevention Department.

As the Executive Committee Level Manager for the Housekeeping and Front Office Departments, Director of Room Operations Lahip is responsible for managing profitability and maintaining service standards in those departments. Lahip checks in with Front Office and Housekeeping on a daily basis. He attends the daily Housekeeping Department meeting and asks housekeepers if things are running smoothly. During one housekeeping meeting when Yoo was training employees on a new method for making beds, he gave some employees instruction and feedback. In the front office, Lahip checks in with the Rooms Controller about rates, and with Guest Service Representatives about guest check-in times. Lahip estimated that he also directs employees to perform tasks or prioritize work on a daily basis, ranging from one to three times per day, or five times per week. For example, Lahip sometimes instructs housekeepers to clean up hair or focus on vacuuming. He also directs housekeepers to prioritize VIP and airline rooms. Occasionally, housekeepers will ask Lahip about leave requests and schedule changes, and he will direct those requests to a Housekeeping manager. He also occasionally collaborates on schedule-

change requests. For Front Office employees, Lahip instructs Guest Service Representatives to update guest information when they forget and to stock gifts in the gift shop.

B. SKILLS AND TRAINING

All employees receive core training on service, anti-harassment, the Americans with Disabilities Act, and preventing human trafficking. However, in addition to the core training, employees also receive job-specific training. For example, Room Controllers are trained to block rooms, and how and when to inform guests when their rooms are ready. AYS Agents are trained to operate the telephone system. Guest Service Representatives are trained to make key cards. Night Auditors are trained to conduct front and back audits. Guest Service Aides are trained on proper lifting. Housekeepers are trained to properly use chemicals, to make beds, and on proper lifting.

Additionally, Guest Service Representatives, AYS Agents, PM Front Desk Clerks/Night Auditors, and the Shipping & Receiving Attendants are trained to use a computer system called the Full-Service Property Management System (System). Full training on how to use the System can take two to three weeks. Guest Service Aides are trained to a lesser degree on how to use the System, and they only use it to look up guests. The AYS Runner is not trained on, and does not use, the System. A high school diploma or GED equivalent is recommended for Guest Service Representatives, AYS Agents, PM Front Desk Clerks/Night Auditors, AYS Runner, and the Shipping & Receiving Attendant. Moreover, these employees are expected to speak English proficiently. Contrastingly, no education level is required or recommended for the employees in the petitioned-for unit. Also, only a rudimentary understanding of English is required for Housekeeping employees. Guest Service Representatives and Restaurant employees are trained to use credit card readers and the Hotel's point of sale system.

C. JOB FUNCTIONS

Guest Service Representatives are responsible for interacting with guests, responding to guest questions and other inquiries, room assignments, processing guest room charges, and checking guests in and out. PM Front Desk Clerks/Night Auditors have the same responsibilities as the Guest Services Representatives and are additionally responsible for auditing room rates, reviewing adjustments to room rates, and processing all Hotel receipts in the System. Former Director of Human Resources Lisa Krone also recalled one occasion when a front desk employee assisted a guest with obtaining ice cream from the food and beverage area after it closed, and retrieved an item from a guest room and delivered it to the guest at the airport. However, Krone testified she could not recall any other examples where Guest Service Representatives assisted a guest in a similar manner.

Guest Service Aides assist guests with luggage and deliver laundry. The position is a dual-concierge position. In this role, Guest Service Aides also answer guest questions, assist with check-in when requested, make recommendations, and make reservations.

Rooms Controllers are responsible for maintaining the Hotel's contractual accounts with airlines, processing reservations, and controlling room inventory.

AYS Agents are responsible for handling any and all internal and external calls at the Hotel. This includes directing calls to the appropriate department and answering guest questions. They also check in guests through the Hotel's mobile check-in feature. Checking in guests through the Hotel's mobile check-in feature accounts for approximately 30 to 40 percent of their work.

AYS Runners are responsible for delivering items, such as rollaway beds, cribs, refrigerators, extra towels, bathrobes, toothbrushes and other items to guest rooms. AYS Runners also deliver some items received by the Shipping and Receiving Attendant, although the frequency and amount of such work is not clear on the record.

The Shipping and Receiving Attendant is responsible for receiving, logging, and storing all incoming and outgoing packages at the Hotel. The Attendant is also responsible for notifying guests and departments when packages have arrived. Lahip testified that when equipment is delivered, the Attendant signs for the delivery, notifies the person in charge of the department for which the delivery is intended, and then that department takes over from there. For example, Lahip testified that the AYS Runner retrieves deliveries of cleaning supplies and pillows from the Shipping and Receiving Attendant and delivers them to the Housekeeping Department. However, it was not clear from the record whether AYS Runners delivered packages throughout the entire Hotel or only to the Housekeeping Department. The Attendant also delivers mail to different departments and to the Guest Service Aide for distribution to guests.

Housekeeping employees are responsible for cleaning rooms, public areas, and the health club. Culinary employees are responsible for cooking. Banquet employees are responsible for setting up, serving, breaking down, and cleaning up after banquet events.

D. FUNCTIONAL INTEGRATION & FREQUENCY OF CONTACT

Front Office employees, except for the Guest Aide and the AYS Runner, work primarily behind the front desk area on the first floor. Guest Service Aides work about 10-15 feet away from the front desk area at the bell stand. AYS Runners work throughout the Hotel delivering items to guest rooms. When they are not delivering items, it is not clear from the record whether AYS Runners return to the Front Desk or Housekeeping Department. Krone claimed that AYS Runners worked behind the front desk but were not necessarily expected to return between runs. Lahip stated that he was familiar with the AYS Runner position because he visited Housekeeping on a daily basis. All told, it appears from the record testimony that AYS Runners are regularly in and out of the Housekeeping Department throughout the day. The Housekeeping Department is also

located on the first floor. However, to access Housekeeping from the Front Office, employees must take an escalator up to the second floor and an elevator back down to the first floor to avoid walking through Flights 101. Flights 101 is located about 5 feet away from the front desk.

Hotel employees in different departments have routine contact with each other. On a nightly basis, Guest Service Representatives communicate with Restaurant employees about customers forgetting to list their name or room number on bills. About every two days, Guest Service Aides direct Lobby Attendants to clean up spills. AYS Runners communicate with housekeeping regarding whether rooms are ready for them to make deliveries. AYS Agents have constant communication with AYS Runners regarding what items to deliver to what rooms. AYS Agents also communicate with room service about after-hours orders, and with housekeepers about guest check-outs. The Shipping and Receiving Attendant communicates with AYS Runners, Guest Service Aides, and Department Heads regarding deliveries; although there is no evidence that he communicates with other employees.

Additionally, the Front Office, Housekeeping, Room Service, and the Shipping & Receiving Attendant all play a role in the Hotel's services to its guests. The Shipping & Receiving Attendant orders and receives the supplies necessary to run the Hotel. The Housekeepers clean public areas and prepare rooms for guests. The Restaurants, Culinary Department, and Room Service provide food and beverages to guests. The Front Office manages guest reservations, and check-ins and check-outs.

E. INTERCHANGE

The Employer provided evidence that various classifications that Petitioner seeks to exclude from the unit are "multi-coded" to perform work in certain classifications Petitioner seeks to include. By way of explanation, employees must be "coded" to work in a particular position. For example, an employee who is trained to work as a banquet attendant and a housekeeper would be "multi-coded" as a banquet attendant and a housekeeper. However, having multiple codes does not indicate how frequently an employee works in each position. In this regard, Lahip stated that the front office employees had multiple codes as the result of a permanent transfer and that they did not often (if at all) switch back and forth between their coded positions. In fact, although four Guest Service Aides are "double-coded" to work in Banquets, Banquet Server Bharad Barekh testified that, in his 22 years working in Banquets, he has never observed a Guest Service Aide working in the Banquets Department. Likewise, Lahip only recalled that two Guest Service Aides worked in banquets on two occasions. He additionally recalled four occasions where one AYS Agent worked across her codes as a housekeeper. Krone testified that she also saw that same AYS Agent work across her codes to cover a Starbucks shift once.²³

² Although Krone did not name the employee, there is only one Front Desk employee coded to work in Starbucks.

³ Krone also provided testimony that room service attendants complained to her in the past that they were asked to deliver items to rooms on occasion, and that she recalled one occasion where the front desk informed her that Guest

Conversely, within the Front Office Department, Krone testified the Guest Service Representative and AYS Agent frequently cover for each other. Additionally, both the Guest Service Representative and AYS Agent cover for the Guest Service Aide. The Rooms Controller helps Guest Service Representatives with guest check-ins when the hotel is busy and commonly assists AYS Agents with Answering phones. Indeed, Lahip testified the Guest Service Representatives and AYS Agents worked across their codes about twice per week. However, the front office employees do not frequently cover for the AYS Runner position. In fact, only one employee was multi-coded to work as an AYS Runner and another front office position. Lahip clarified that the employee did not work as an AYS Runner often and that his multiple codes were the result of a permanent transfer. However, Krone testified that housekeepers covered for AYS Runners when they were very busy, though she did not specify how often that occurred.

There is no evidence in the record that the Shipping and Receiving Attendant ever performs the duties of employees in the petitioned-for unit.

Within the petitioned-for Unit, approximately 20 Housekeeping and 15 Restaurant employees are multi-coded to work in Banquets. Lahip testified that housekeepers do not work in banquets very often. He specified that housekeepers worked banquets primarily around the holidays and in March and April. Banquet Server Barekh testified that some combination of these employees worked large banquet events approximately five to seven times per year.

F. TERMS AND CONDITIONS OF EMPLOYMENT

The Employer offers all full-time employees the same medical, dental, tuition reimbursement, retirement savings, life insurance, and accidental death and dismemberment benefits. All employees log their work hours on the Kronos time-keeping system, earn hourly wages, and are paid on a weekly basis. The wages for Housekeepers, Guest Service Aides, AYS Runners, AYS Agents, Guest Service Representatives, and Rooms Controller are, respectively, \$18.80, \$18.00, \$19.80, \$21.95, \$22.95 per hour. Employees who work the overnight shift in their position make an extra \$0.50 per hour. There is no evidence regarding the hourly wage of the Shipping and Receiving Attendant. The Employer also maintains a List of Standard Operating Procedures and an Employee Handbook that apply to all its employees. Additionally, all employees are subject to the same disciplinary process and progressive-discipline policy, and all employees must undergo an annual performance review performed by their department head.

G. INDUSTRY PRACTICE

The Union represents 37 “Class A” hotels in San Francisco and San Mateo Counties. Petitioner President Anand Singh defined Class A hotels as larger hotels that have a food and beverage and banquets department. The Petitioner does not represent any front desk employees at these hotels.

Service Agents cleaned rooms during an overnight shift when the hotel was sold out, but she had no personal knowledge of these incidents. Because that hearsay testimony has no probative value, I am disregarding it.

However, the Petitioner does represent front desk employees in three small hotels. Additionally, the Petitioner also typically represents Guest Service Aides and AYS Agents,⁴ but the AYS Agents in the unit(s) the Petitioner represents do not check in guests.

II. BOARD LAW

When examining the appropriateness of a unit, the Board need not determine whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is "an appropriate unit." *Wheeling Island Gaming*, 355 NLRB 637, 637 n.1 (2010), citing *Overnite Transportation Co.*, 322 NLRB 723 (1996). If the petitioned-for unit is deemed inappropriate, the Board considers alternate unit proposals. *Overnite Transportation*, 322 NLRB at 723 ("[t]he Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining").

To determine whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. *See Wheeling Island Gaming*, supra. Additionally, the Board analyzes "whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from the unit to warrant a separate bargaining unit." *PCC Structural, Inc.*, supra, slip op. at 11 (emphasis in original). In making these determinations, the Board considers whether the employees (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *Id.* (citing *United Operations*, 338 NLRB 123 (2002)). The Board considers all of the factors together, as no single factor is controlling.

In the hotel industry, the Board once held that all operating personnel have such a high degree of functional integration and mutuality of interests that they should be grouped together for purposes of collective bargaining. *Arlington Hotel Co.*, 126 NLRB 400, 404 (1960)). However, six years later, in *77 Operating Co.*, 160 NLRB 927, 930 (1966), the Board overruled *Arlington Hotel Co.* and decided that it would thereafter "consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees" of a hotel. In addition to the "facts peculiar" to each hotel, the Board also considers local practice when determining the appropriate scope of bargaining units. *See Lodgian*, 332 NLRB 1246, 1253 (2000) (finding the local area exclusion of front desk employees to be "highly significant"); *Management Directors, Inc. d/b/a Columbus Plaza Hotel*, 148 NLRB 1053, 1054 (1964) ("In view of the area

⁴ This position is called PBX Operator at the other hotels the Union represents.

bargaining practice,” Board found appropriate the petitioned-for unit that excluded office clericals and front desk employees).

Since *Arlington Hotel Co.*, the Board has repeatedly found units separating a hotel’s white-collar workforce from its blue-collar workforce appropriate. See, e.g. *Regency Hyatt House*, 171 NLRB 1347 (1968); *Dinah’s Hotels and Apartments*, 295 NLRB 1100 (1989). Additionally, the Board has historically found units in the hotel industry to be appropriate that do not include all employees, even where there was a high degree of functional integration, high frequency of contact, similar terms in conditions of employment, and even some shared supervision between employees. See, e.g. *Omni-Dunfrey Hotels, Inc. d/b/a Omni International Hotel of Detroit*, 283 NLRB 475 (1987)(holding a unit of maintenance-only employees was appropriate where the maintenance employees shared common overall supervision with other hotel employees, received the same benefits as other employees, punched the same time clock as other employees, but were paid more than other employees and there was no evidence of interchange); *Lodgian*, supra (upholding a Regional determination that a unit of housekeeping, food and beverage, and maintenance employees that excluded front office clerical employees and bellmen was appropriate where the facility was integrated and there was substantial contact between employees, but the contact between the front office employees and the petitioned-for unit was limited to the front office employees directing the other employees to perform tasks, communicating the availability of rooms, and making sure services were performed, and there was evidence of only one isolated incident of temporary interchange); *Dinah’s Hotels and Apartments*, supra (holding a unit of only front desk employees was appropriate where all hotel employees were paid hourly, had identical benefits, accrued vacation and sick leave the same, had the same payday, had routine contact, and the front office employees shared common supervision with the maintenance employees, but the incidents of front office employees performing maintenance or housekeeping tasks “were extremely infrequent” and there was otherwise no evidence of interchange or job overlap).

However, the Board has found units that exclude front desk employees to be inappropriate where there was a high degree of job overlap and interchange between front office employees and the employees in the petitioned-for unit. See *Golden Eagle Motor Inn*, 246 NLRB 323 (1979)(finding it was improper to exclude front office employees from a unit of hotel, laundry, and maintenance employees where the front desk performed routine maintenance as a daily part of their job duties and regularly cleaned and made up rooms); *Servico, Inc. dba Holiday Inn, Pittsburgh*, 214 NLRB 651 (1974)(finding appropriate only a unit that included all the employees at the employer’s facility where porters regularly drove people, checked in guests, delivered room service, and cleaned the kitchen, dining room, and lobby, and; desk clerks occasionally drove people, delivered room service, and cleaned rooms). Indeed, when finding a unit of only front office employees was appropriate in *Dinah’s Hotel and Apartments*, the Board noted that “the differences in the nature of employees’ respective duties [in *Golden Eagle*] were frequently and regularly blurred.”

Here, nearly all of the employees whom the Employer seeks to include are organized into distinct departments, separate and apart from the petitioned-for employees. The one exception is the AYS Runner, who despite being nominally listed as a Front Office classification, is *de facto*, a part of the Housekeeping Department. Indeed, the AYS Runner is subject to discipline by, reviewed by, and requests leave from, the Housekeeping Department heads. To illustrate the point, Director of Room Operations Lahip interchangeably referred to this position as the “housekeeping runner.” Excepting the AYS Runner, I find that this factor weighs in favor of finding the petitioned-for unit to be appropriate.

I also find that, while Lahip exercises overall supervision over the housekeepers and front office personnel, the respective day-to-day supervisors of these employees are Director of Services Amy Yoo and Front Office Department Head Shane Okumura. Indeed, these individuals are responsible for running daily department meetings, scheduling employees, collaborating with Human Resources on the discipline of their respective employees, and approving leave requests. Tellingly, when employees approach Lahip about leave requests or scheduling, he refers the issues to the appropriate department head. Additionally, although Lahip directs some employees at random to perform or prioritize work one to three times per day, true day-to-day supervisors perform these tasks much more frequently. Excepting the AYS Runner, I find that this factor weighs in favor of finding the petitioned-for unit to be appropriate.

Almost all of the employees the Employer seeks to include in the unit have distinct overall skills and training from employees in the petitioned-for unit. Although all employees receive the same basic core training and share some basic skills, they receive and apply additional training and skill sets unique to their jobs. Indeed, there is no evidence that employees in the petitioned-for unit have the skills to conduct a night audit, make key cards, operate the Hotel’s phone system at the level of an AYS Agent, or coordinate incoming and outgoing Hotel deliveries. However, certain housekeepers have the skill set to cover for the AYS Runner, as they have when s/he is busy. Moreover, a majority of the work of the Front Office employees and the Shipping and Receiving Attendant are “white collar” in nature, whereas all of the work in the petitioned-for unit is manual or “blue collar.” The two exceptions are the Guest Service Aide and the AYS Runner position. Guest Service Aides conduct some manual labor when they handle luggage. However, as the position is a dual-concierge position, the majority of the Guest Service Aides’ tasks are white-collar in nature, such as making reservations for guests, assisting with check-ins, and making recommendations for activities. Additionally, Guest Service Aides receive training on the use of the System, like other front office employees. By contrast, AYS Runners exclusively perform manual labor and receive no training on the System. Excepting the AYS Runner, I find that this factor weighs in favor of finding the petitioned-for unit to be appropriate.

For the most part, the classifications that the Employer seeks to include perform distinct job functions from the petitioned-for unit, with little to no overlap. Although Krone testified about a single incident when a Guest Service Representative fetched an ice cream for a guest after closing time and another in which a Guest Service Representative retrieved a plane ticket from a guest

room, these were unique, isolated incidents. Accordingly, the Guest Service Representatives' duties and those of the employees in the petitioned-for unit are not frequently and regularly "blurred" such that exclusion of the Guest Service Representatives from the unit is inappropriate. See *Dinah's Hotel and Apartments*, supra, distinguishing *Golden Eagle*.

The record establishes that there is frequent contact between employees in the petitioned-for unit and the excluded employees. All of the departments maintain contact with one another to ensure smooth service delivery to the Hotel's guests. Although this factor weighs in favor of including the excluded classifications in the petitioned-for unit, the Board has repeatedly found it appropriate to exclude certain hotel employees from petitioned-for units despite frequent contact and high functional integration. See, e.g. *Dinah's Hotel and Apartments* and *Lodgian*, supra. Indeed, as the Board observed in *Lodgian*, "most operations in the hotel industry" are integrated with a substantial amount of daily contact among employees.

To be sure, the Board considers employee interchange to be an important factor, and but for the housekeepers and the AYS Runner, the record evidence demonstrates that very little interchange exists here between the petitioned-for unit and those classifications Petitioner seeks to exclude. Although there are a few examples on the record regarding permanent transfers of employees from classifications in the petitioned-for unit to the Front Office, permanent transfers are a less significant indication of interchange than temporary transfers. See, e.g., *Red Lobster*, 300 NLRB 908, 911 (1990). Additionally, the Board has found that isolated incidents of interchange lack significant weight, especially where the interchange flows in only one direction. *Westward Ho Hotel*, 171 NLRB 1351 (1968)(finding a unit of hotel kitchen employees excluding all other operating employees was appropriate despite some instances where kitchen staff was assigned to wait tables or scrub floors because the employer only assigned employees to wait tables with prior experience, only assigned employees to scrub floors in emergencies, and there was no evidence the excluded employees were ever assigned to work in the kitchen). Here, the Employer's witnesses only recalled one AYS Agent covering a Starbucks shift once and housekeeping shifts four times, and two bellmen covering two banquet shifts each. Further, these employees were enabled to work in these positions only because they previously held the position and were coded to do so. Moreover, with the exception of the AYS Runner's interchange with housekeepers, employees in the petitioned-for unit have never crossed into the classifications Petitioner seeks to exclude. There is also no record evidence that the Shipping and Receiving Attendant has ever covered for, or transferred into, any classification in the petitioned-for unit. Again, but for the unit placement of the AYS Runner, this factor weighs in favor of finding the petitioned-for unit to be appropriate.

Apart from wages, the petitioned-for Unit and the excluded employees share nearly identical terms and conditions of employment.

With regard to area practice, the record evidence is insufficient to determine the scope of bargaining units at similarly-sized hotels in the area and the basis therefor. Some of the

classifications at issue here appear to function differently at the Employer's Hotel than at the other hotels the Petitioner represents. Indeed, the Petitioner stated that AYS agents/ PBX Operators at hotels where it represents employees do not perform any mobile check-ins or check-outs. Here, this accounts for 30-40% of the Employer's AYS agents' job duties. Further, the Employer's Guest Service Aides receive some training similar to Front Office employees and perform a dual-concierge function, but there is no evidence on the record regarding that training and function at other area hotels. Consequently, I cannot make an informed decision regarding area practice, thus rendering this factor neutral.

Based on all of the above, I find that the AYS Runner shares a strong community of interest with the petitioned-for employees, and to exclude that classification would create a fractured unit among the Employer's blue-collar employees. In reaching this finding, I place particular emphasis on the fact that AYS Runners perform exclusively blue-collar manual work, interchange with the petitioned-for housekeepers on an ongoing basis, share a common day-to-day supervisor with the petitioned-for housekeepers, and that they are substantively a part of the Housekeeping Department. Accordingly, in order to be appropriate, the unit must include the AYS Runner.

Having found appropriate Petitioner's proposed alternative unit including the AYS Runners (hereinafter the "alternative unit"), I conclude that the alternative unit has a sufficiently distinct community of interest from the classifications Petitioner seeks to exclude: the Guest Service Aides, AYS Agents, Guest Service Aides, PM Front Desk Clerks/ Night Auditors, Room Controllers, Guest Service Representatives (hereinafter "Front Office employees), and Shipping & Receiving Attendant.

To reach this finding I place particular emphasis on the fact that the excluded classifications of employees are white-collar, or at least partially white-collar employees, do not share a day-to-day supervisor with any employee in the alternative unit (save, perhaps at least in part, the AYS Runner), and their job duties do not overlap with the alternative-unit employees. I recognize that there were isolated incidents of one-way temporary interchange involving white-collar employees covering for blue-collar employees; however, the interchange was not reciprocal, and it does not occur on an ongoing basis. Additionally, the excluded white-collar workers do not share the high degree of job overlap with the alternative unit that the Board found significant in *Golden Eagle* and *Servico*, supra. As discussed above, although the employees in the excluded classifications and those in the alternative unit are functionally integrated, enjoy a substantial degree of contact, share many similar terms and conditions of employment, and have some degree of shared overall supervision at the highest levels, the Board has repeatedly found these factors to be unavailing when the other factors discussed above are not met. See, e.g. *Omni-Dunfrey Hotels*; *Lodgian*; *Dinah's Hotels and Apartments*, supra.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All-full time and regular part-time Attendants-Health Club; AYS Runners; Housekeepers; Housekeepers-Lobby; Housekeepers-Turndown; Housekeeping Aids (Housemen); Housekeeping Laundry Attendants; Housekeepers; Project Room Team/Housekeeper Made Ready Employees; Attendants-Bar; Bartenders; Dining Room Attendants; Food Runners (Bar); Hanger Servers; Hosts; In-Room Dining Servers; In-Room Dining Operators; Beverage Runners; Cocktail Servers; Flight Servers-Lounge; Food & Beverage M-Lounge; Cold-Side Attendants; Cooks; Dishwashers; Expeditors; Kitchen Purchasing Clerks; Kitchen Utility Employees; Cooks and Lead Cooks; Lead Stewards; Aisle CSMs; Banquet Bartenders; Banquet Cooks; Banquet Housemen (CSM); Banquet Servers (Including Regular On-Call); Housekeeping Aids-Banquet; and Starbuck Baristas employed at the San Francisco Airport Marriott Waterfront Hotel.

Excluded: Guest Service Aides; Shipping and Receiving Attendants; Auditors; AYS Operators; Banquet Administrative Assistants; Catering Supervisors; Front Desk Clerks; Chefs and Sous Chefs; Gate Path Employees; In-Room Dining Administrative Assistants; J-I Exchange Visitors; Kitchen Managers; Maintenance and Engineering Employees; Purchasing Storeroom Supervisors; Sales Employees; Supervising Cooks; Temporary Employees; Voyagers; Casual and Irregular Part time Employees; Office Clericals; Professional Employees, Guards, and Supervisors as defined by the Act.

There are approximately 272 employees in the voting unit found appropriate.

5. The parties were unable to agree on the eligibility and inclusion of the Lead Cooks, Kitchen Lead Storekeeper, Housekeeping Leads, Lead Baker, and the Dishwasher/Utility Lead. As indicated in the Acting Regional Director's prehearing Order, resolution of their eligibility and inclusion shall be deferred to post-election proceedings, if necessary. The individuals in those disputed classifications shall be permitted to vote subject to challenge.

⁵ The Employer is a Delaware corporation engaged in the operation of the San Francisco Airport Marriott Waterfront Hotel. Within the past twelve months, it derived gross revenue in the operation of its hotel in excess of \$500,000 and purchased and received goods valued in excess of \$5,000 directly from sources outside the State of California.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Unite Here Local 2.

A. Election Details

Petitioner having waived its right to the voter list for a full 10 days prior to the election, the election will be held on Thursday, March 28, 2019 from 6:00 a.m. to 8:00 a.m., 1:00 p.m. to 3:00 p.m., and 4 p.m. to 6 p.m. at the Employer's facility located at 1800 Old Bayshore Hwy in Burlingame, California.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period immediately preceding this decision and direction of election. including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, March 19, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the forthcoming Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice immediately upon receipt, at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E7File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at San Francisco, California, on the 15th day of March 2019.

Jill H. Coffman
Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

CERTIFICATE OF SERVICE

I, J. Carlos Gonzalez, attorney for Marriott Hotel Services, Inc., hereby certify that on May 2, 2019, a copy of the foregoing Request for Review of the Regional Director's Decision and Direction of Election was electronically filed on the NLRB's e-filing system and served via electronic mail and U.S. mail, upon the following:

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/s/ J. Carlos González
J. Carlos González